

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----

In the matter of the Petition of	:	
	:	
WOOD COUNTY COURTHOUSE AND SOCIAL	:	
SERVICES EMPLOYEES, LOCAL 344-A,	:	
AFSCME, AFL-CIO	:	
	:	Case XVII
For a Declaratory Ruling Involving	:	No. 14694 DR(M)-19
	:	Decision No. 10356-A
WOOD COUNTY	:	
	:	

-----

Appearances:

Mr. Francis J. Podvin, Assistant Corporation Counsel, appearing on behalf of the Municipal Employer.  
Mr. Malcolm H. Einerson, Business Representative, appearing on behalf of the Union.

DECLARATORY RULING

Wood County Courthouse and Social Services Employees, Local 344-A, AFSCME, AFL-CIO, having requested the Wisconsin Employment Relations Commission to issue a declaratory ruling to determine whether the position held by Robert J. Luzenski is supervisory and therefore excluded from the bargaining unit of courthouse and social service employees employed by Wood County, Wisconsin; and a hearing having been held in the matter on June 28, 1971, George R. Fleischli, Hearing Officer, being present; and the Commission having considered the evidence and arguments of Council and being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That Wood County, Wisconsin, hereinafter referred to as the Municipal Employer, is a municipal employer within the meaning of Section 111.70(1)(a).
2. That Wood County Courthouse and Social Services Employees, Local 344-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its principal offices at Wisconsin Rapids, Wisconsin, and has at all times material herein been the certified bargaining representative of all regular full time and regular part time employees of the Wood County Courthouse and annexes, excluding elected officials, department heads, supervisory personnel, custodial and maintenance personnel, professional employees in the social services department and law enforcement personnel.
3. That until February 9, 1971, Robert J. Luzenski an employee in charge of the Municipal Employer's surplus commodity program was, by mutual agreement between the Municipal Employer and the Union, included within the bargaining unit described above; that

on February 9, 1971, the Municipal Employer's Board of Supervisors passed a resolution, based upon the recommendation of its Personnel Committee, stating that Luzenski was performing the duties of a supervisor and changing his title to that of Supervisor of the Wood County Surplus Commodity Distribution Program.

4. That prior to November 1, 1970, Luzenski had a part time helper who was subject to the immediate supervision of the Director of the Department of Social Services and whose duties were limited to assisting Luzenski with the loading and unloading of commodities; that when the Surplus Commodities Program was expanded in November, 1970, Luzenski assisted in the hiring and training of Gary Jepson, a full time employe, whose duties were defined by Luzenski and included the handling of applications and other paper work involved in the Commodity Distribution Program and in the delivery of commodities to eligible recipients; that since said expansion Luzenski has hired and trained Quinton Storman, a part time employe, who works approximately 100 hours per month and whose duties include assisting in the distribution of the commodities and such other work as Luzenski assigns to him; that since said expansion Luzenski has had the authority to hire, and has hired as many as three casual helpers, for the purpose of loading and unloading of commodities; that Luzenski has evaluated the performance of Jepson and on the basis thereof Jepson received a raise and was promoted to the status of permanent employe; that Luzenski has the power to effectively recommend the discipline or discharge of Jepson, and has the power to discharge Storman, or any of the casual employes hired by him and has in fact discharged several men who were considered unsatisfactory in his judgment; and that Luzenski makes all work assignments, schedules the hours of work and supervises the work of Jepson, Storman and the casual employes.

CONCLUSION OF LAW

That Robert J. Luzenski is a supervisor and not a municipal employe within the meaning of Section 111.70(1)(b), Wisconsin Statutes.

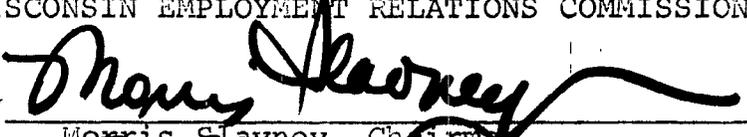
DECLARATORY RULING

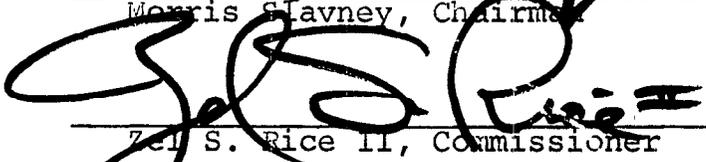
That Robert J. Luzenski is excluded from the bargaining unit consisting of all regular full time and regular part time employes of the Wood County Courthouse and annexes, excluding elected officials, department heads, supervisory personnel, custodial and maintenance personnel, professional employes in the social services department and law enforcement personnel, since he is a supervisor.

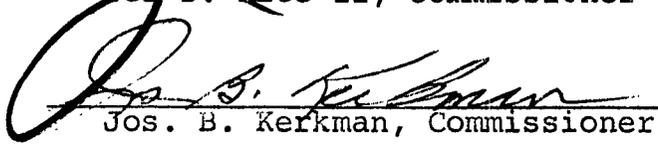
Given under our hands and seal at the City of Madison, Wisconsin, this 20<sup>th</sup> day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of :  
 :  
WOOD COUNTY COURTHOUSE AND SOCIAL :  
SERVICES EMPLOYEES, LOCAL 344-A, :  
AFSCME, AFL-CIO : Case XVII  
 : No. 14694 DR(M)-19  
For a Declaratory Ruling Involving : Decision No. 10356-A  
 :  
WOOD COUNTY :  
 :  
-----

MEMORANDUM ACCOMPANYING DECLARATORY RULING

When the Surplus Commodity Distribution Program was expanded in November, 1970, the duties performed by Robert J. Luzenski were changed to include supervision of one regular full time, one regular part time and two to three casual employees. He was subsequently designated Supervisor of the Wood County Surplus Commodity Distribution Program by the County Board on February 9, 1971. The fact that Luzenski has been given the title of "supervisor" of the Surplus Commodity Distribution Program is not necessarily relevant in deciding the question of whether or not Luzenski is a supervisor as that term is used in the field of labor relations for the purpose of exercising the rights afforded municipal employes under Section 111.70 of the Wisconsin Statutes. The question that must be decided is whether or not he is a supervisor of other employes and should therefore be excluded from the bargaining unit of courthouse employes as a representative of management.

In deciding the question of whether or not an employe is a supervisor the Commission considers the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes.
2. The authority to direct and assign the work force.
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes.
7. The amount of independent judgment and discretion exercised in the supervision of employes. 1/

1/ City of Milwaukee (Engineers), (6960) 12/64.

In order to find that an employe is a supervisor it is not necessary that the Commission find that all of the above factors are present, but these factors should appear in sufficient combination in a given case to clearly establish that an employe is a supervisor.

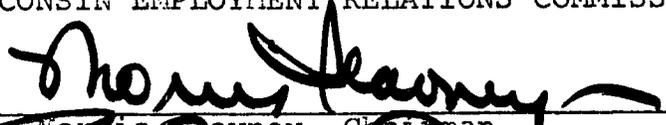
It is clear that Luzenski has the authority to effectively recommend the hire, promotion, transfer, discipline or discharge of employes, and to direct and assign the work force. It is clear from the record that Luzenski is free to exercise considerable independent judgment and discretion in exerting that authority. Although he only received a small increase in salary at the time of the County Board's resolution his present salary is comparable to other non-professional supervisors in the employ of the County.

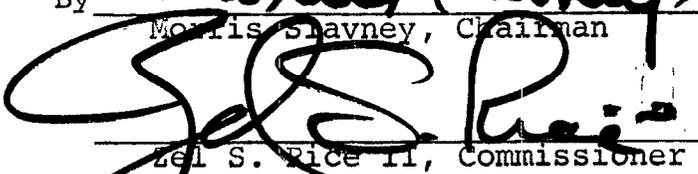
If Luzenski did nothing more than direct and assign the work force on a day-to-day basis the Commission might be inclined to find that he was a leadman or a "working supervisor" due to the fact that he spends a considerable amount of time working along side the other employes and handling the administrative duties of his office. However the evidence is clear that he exercises extensive supervisory authority over two regular and three irregular employes and he does not share that authority with any other supervisor. Because of the character of the supervisory duties performed by Luzenski and the fact that the amount of time he spends performing those duties is not insubstantial the Commission concludes that he is a supervisor and should be excluded from the bargaining unit of courthouse employes.

Dated at Madison, Wisconsin, this 20<sup>th</sup> day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner